IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor	:	Ronald Marsh	
Appln. No.	:	10/629,183	
Filed	:	July 29, 2003	Group Art Unit: 3664
Title	:	WEATHER INFORMATION NETWORK ENABLED MOBILE SYSTEMS (WINEMS)	Examiner: Brian J. Broadhead
Docket No.	:	U66.12-0005	

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1. [Corrected] Brief for Appellant.

Respectfully submitted,

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Date: 3.19.2008

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[CORRECTED] BRIEF FOR APPELLANT

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This is an appeal from an Office Action mailed October 20, 2006, in which claims 12, 16, 19, 42, 43, 47 and 48 were finally rejected.

Contents

Real Party in Interest

The real party in interest is the University of North Dakota of Grand Forks, SD, who is the owner of the entire right, title, and interest in the application.

Related Appeals and Interferences

There are no known related appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

Status of the Claims

I.   Total number of claims in the application

      A.   Claims in the application are: 12, 16, 19, 42, 43, 47 and 48.

II.   Status of all of the claims

      A.   Claims canceled: 1-11, 13-15, 17, 18, 20-41 and 44-46.

      B.   Claims withdrawn but not canceled: none

      C.   Claims pending: 12, 16, 19, 42, 43, 47 and 48.

      D.   Claims allowed: none

      E.   Claims rejected: 12, 16, 19, 42, 43, 47 and 48.

III.   Claims on appeal

      A.   The claims on appeal are: 12, 16, 19, 42, 43, 47 and 48.

Status of Amendments

No amendments have been made to the claims following the final Office Action mailed October 20, 2006, in which claims 12, 16, 19, 42, 43, 47 and 48 were finally rejected. A Response After Final was filed December 20, 2006 in response to the final Office Action. No amendments to the claims were made in the Response After Final filed December 20, 2006. An Advisory Action mailed January 16, 2007 indicated that the rejections of claims 12, 16, 19, 42, 43, 47 and 48 were maintained despite arguments presented in the Response After Final.

A Notice of Appeal was filed with a Pre-Appeal Brief Request for Review on February 9, 2007, in which Applicant requested review of the final rejection. The Notice of Panel Decision from Pre-Appeal Brief Review, mailed October 12, 2007, maintained the rejection of claims 12, 16, 19, 42, 43, 47 and 48 and indicated that the application remains under appeal because there is at least one actual issue for appeal.

Summary of Claimed Subject Matter

The present invention relates to a portable alert system, and the pending application currently includes two independent claims. Both independent claims recite control software utilized by a computer processor for processing the emergency event data and an input from the global positioning system to provide an output to a display indicating a position of the portable alert system and a position of an emergency, and the computer processor utilizes the control software to simultaneously process the emergency event data from the radio receiver and the digital data from a satellite receiver (claim 12) or a cellular phone system (claim 19). (Specification, p. 5, ll. 21-26; p. 10, ll. 22-24; FIGS. 1a, 1b, 1c, 2a, 3a and 3b). The language of independent claims 12 and 19 is similar, with the only substantive difference being that claim 12 is directed to utilizing a satellite receiver to receive digital data and claim 19 is directed to utilizing a cellular phone system to receive digital data. (See specification p. 12, ll. 10-14; FIGS. 1a, 1b 2a, 3a and 3b). The specific limitations of independent claims 12 and 19 are as follows.

Independent claim 12 relates to a portable alert system for receiving emergency event data. The system according to independent claim 12 requires a radio receiver for receiving

emergency event data, a global positioning system receiver for determining a location of the portable alert system, a satellite receiver for receiving digital data, a computer processor disposed within the portable alert system, and control software utilized by the computer processor for processing the emergency event data and an input from the global positioning system to provide an output to a display indicating a position of the portable alert system and a position of an emergency. (Specification p. 4, ln. 24 to p. 5, ln. 26; p. 9, ll. 10-12; p. 10, ll. 6-26; p. 11, ll. 3-11;FIGS. 1a, 1b, 1c, 2a, 3a and 3b). According to independent claim 12, the computer processor must process the input from the global positioning system receiver to automatically program the radio receiver to receive only an emergency data broadcast data signal associated with the location of the portable alert system and utilize the control software to simultaneously process the emergency event data from the radio receiver and the digital data from the satellite receiver. (Specification p. 6, ln. 24 to p. 8, ln. 2; p. 9, ll. 7-10; p. 13, ln. 3 to p. 14, ln. 20; FIGS. 1a-4). The structure and language of independent claim 12 draws a distinction between digital data (used by the satellite receiver) and emergency event data (from the radio receiver) and input "data" used by the global positioning system receiver.

Independent claim 19 relates to a portable alert system for receiving emergency event data. The system according to independent claim 19 requires a radio receiver for receiving emergency event data, a global positioning system (GPS) receiver for determining a location of the portable alert system, a cellular phone system for receiving digital data, a computer processor disposed within the portable alert system, and control software utilized by the computer processor for processing the emergency event data and an input from the global positioning system to provide an output to a display indicating a position of the portable alert system and a position of an emergency. (Specification p. 4, ln. 24 to p. 5, ln. 26; p. 9, ll. 10-12; p. 10, ll. 6-26; p. 11, ll. 3-11;FIGS. 3a and 3b). According to independent claim 19, the computer processor must process the input from the global positioning system receiver to automatically program the radio receiver to receive only an emergency data broadcast data signal associated with the location of the portable alert system, and utilize the control software to simultaneously process the emergency event data from the radio receiver and the digital data from the cellular phone

system. (Specification p. 6, ln. 24 to p. 8, ln. 2; p. 9, ll. 7-10; p. 12, ln. 10 to p. 13, ln. 2; p. 13, ln. 3 to p. 14, ln. 20; FIGS. 2b and 3a-4). The structure and language of independent claim 19 draws a distinction between digital data (used by the cell phone system) and emergency event data (from the radio receiver) and input "data" used by the global positioning system receiver.

Grounds of Rejection to be Reviewed on Appeal

1.   Whether claims 19, 43 and 48 are patentable under 35 U.S.C. §102(e) over Videtich (U.S. Pat. App. Pub. No. 2004/0080430);

2.   Whether claims 12, 42 and 47 are patentable under 35 U.S.C. §103(a) as over Videtich (U.S. Pat. App. Pub. No. 2004/0080430) in view of subject matter for which the Examiner took Official Notice; and

3.   Whether claim 16 is patentable under 35 U.S.C. §103(a) over Videtich (U.S. Pat. App. Pub. No. 2004/0080430) in view of Koeller (U.S. Pat. No. 6,297,766).

Argument

In the final Office Action mailed on October 20, 2006, claims 12, 16, 19, 42, 43 and 47-48 were rejected. Claims 19, 43 and 48 were rejected under 35 U.S.C. §102(e) as being anticipated by Videtich (U.S. Pat. App. Pub. No. 2004/0080430). Claims 12, 42 and 47 were rejected under 35 U.S.C. §103(a) as being obvious over Videtich. Claim 16 was rejected under 35 U.S.C. §103(a) as being obvious over Videtich in view of Koeller (U.S. Pat. No. 6,297,766).

1.   **Rejections of Claims 19, 43 and 48**

        A.   Background

            (1)   Summary of Rejections

In paragraphs two and three of the October 20, 2006 final Office Action, claims 19, 43 and 48 were rejected under 35 U.S.C. §102(e) as being anticipated by Videtich (U.S. Pat. App. Pub. No. 2004/0080430).

(2)   The Invention

In general, the present invention relates to a portable alert system for receiving emergency event data. More particularly, the present invention provides a Weather Information Network Enabled Mobile System (WINEMS) unit 10 for receiving (a) emergency event data via a radio receiver (20) and (b) digital data via a satellite receiver (16) or a cellular phone system (92). (See FIGS. 1a, 1b, 1c, 2a, and 3a). The WINEMS unit (10) includes control software (12) that is connected to a display system (14) for providing a visual output based upon information processed from the cellular phone system (92), a global positioning system (GPS) receiver (18), and the weather radio (20). (Specification p. 5, ll. 21-26).

Emergency event data (70) is received by radio by automatically programming the WINEMS unit (10) to receive only an emergency data broadcast signal associated with a current location of the unit (10). In order to accomplish this automatic programming, the GPS receiver (18) obtains position data (64) indicating a location of the WINEMS unit (10). (Specification p. 9, ll. 7-10). Emergency event data (70) specific to the current location of the WINEMS unit (10) can be received by the weather radio (20) through automatic programming based upon FIPS codes and Specific Area Message Encoding (SAME) codes associated with emergency event radio broadcasts. (Specification, p. 6-8, 13 and 14; FIGS. 2b and 4). Control software (12) sends emergency data (70) received from the weather radio (20) to a computer processor running a display software routine (42), which can then generate a visual display output based upon both the emergency event data (70) and processed radar data (60) provided as an overlay to a relevant map, as explained further below. (Specification p. 10, ll. 16-26; FIGS. 1b, 3a and 3b).

Digital data received by the cellular phone system (92) provides additional data that is combined with the emergency event data (70) received by the radio receiver (20) through simultaneous processing for display. Control software (12) and digital mapping software (22) run by the computer processor of the WINEMS unit (10) uses the position data (64) in

conjunction with radar data (56) provided as part of the digital data received by the unit (10). (Specification, p. 5, ll. 12-20). The digital data can optionally provide icons on a relevant map indicative of particular emergency events, such as for hail storms, blizzards, toxic waste spills, etc. to make identification of emergency events easier for users. (Specification p. 6, ll. 11-19; FIG. 3b). A local weather radar extraction software routine (44) is used to extract only the weather radar data specific to the current location of the WINEMS unit (10) based on the position data (64), and the resultant processed radar data (60) is provided via a display software routine (42) to display on the video display (14). (Specification p. 9, ll. 10-12; p. 10, ll. 6-15)

Significantly, the display software (42) generates image data (80) that provides a visual indication of both the emergency and location of the user relative to that emergency, and the image data (80) can be displayed in the form of a map. (Specification p. 10, ll. 22-24). The visual display on the display system 14 is in addition to an audio signal provided to audio software (40) so that the audio portion of the emergency data (70) can be played through an audio system (50). (Specification p. 10, ll. 16-21; FIGS. 1b, 3a and 3b). The location information of the WINEMS unit 10 can be displayed on the map in the form of an icon, which can indicate whether or not the location of the WINEMS unit 10 is static or dynamic relative to the emergency event and, as appropriate, the direction in which the unit (10) is traveling. (Specification p. 11, ll. 3-11; FIGS. 3 a and 3b).

(3)   Videtich

Videtich (U.S. Pat. App. Pub. No. 2004/0080430) discloses a method and system for delivering location-dependent severe weather information. Videtich discloses a GPS receiver (140) for determining vehicle (144) position, a telematics unit (128) located in the vehicle (144), a satellite (120), a satellite radio receiver (124) located in the vehicle (144), a vehicle display unit (126), a call center (108), a mobile telephone tower (158), and a weather information source (102). (Videtich, ¶¶11-13, 15 and 17; FIG. 1). Videtich discloses collecting severe weather data from the source (102) at the call center (108) and then sending a single, compiled (and

potentially reformatted) severe weather data signal to the satellite radio receiver (124) in the vehicle (144) via the satellite (120) and a satellite radio uplink delivery system (116). (Videtich, ¶¶11-14 and 22-24; FIGS. 1 and 2). The severe weather information received by the satellite radio receiver (124) is issued to the vehicle display unit (126) to provide "textural warning types" that "may be rendered as speech output, and/or may be a non-speech audio alarm." (Videtich, ¶19). Videtich does not disclose indicating a location of the vehicle (144) or telematics unit (128) on the vehicle display unit (126).

The Videtich system discloses communicating between the call center (108) and the telematics unit (128) using the mobile telephone tower (158), but does not disclose simultaneously processing emergency event data from two or more sources. (Videtich, ¶¶12-14 and 19-21; FIGS. 1 and 2). Rather, Videtich discloses a separate, conventional telephone link to the call center (108) that allows a user to communicate with the call center (108). In other words, the mobile phone connection of Videtich can be used as an independent communications channel to provide two-way or "duplex" communication between the mobile vehicle (144) and the call center (108) in order to manually obtain new weather information or to submit remote programming changes. (Videtich, ¶¶20 and 21). However, that procedure does not involve simultaneous processing of different data signals but instead is a procedure that triggers the transmission of a single additional data signal after weather information has already been received with the satellite radio receiver (124). Videtich makes clear that communication via the mobile telephone tower (158) takes place after weather data has been obtained with the satellite radio receiver (124), in other words in a non-simultaneous manner. (Videtich, ¶27; FIG. 3). In this way, Videtich discloses that its system can resemble known OnStar™ systems which utilize calls to a live operator located in a centralized call center.

B.   The Office Action Fails To Establish A Prime Facie Case Of Anticipation Because It Relies Upon An Impermissible Construction Of The Claim Language

The primary issue in this appeal is whether it was permissible to interpret Videtich to disclose a computer processor that utilizes control software to simultaneously process emergency event data from the radio receiver and digital data from a cellular phone system to provide an output to a display indicating a position of the portable alert system and a position of an emergency. Page two of the Advisory Action mailed January 16, 2007 includes the Examiner's response to the arguments presented in the Response After Final of December 20, 2006. There, the Examiner advanced the proposition that Applicant "argues a limitation that isn't present," stating that "[t]here is no requirement of simultaneous processing of the digital data and emergency event data to output to a display." This statement in the Advisory Action is made without reference to the language of claim 19 that reads "control software utilized by the computer processor for processing the emergency event data and an input from the global positioning system to provide an output to a display . . . wherein the computer processor further utilizes the control software to simultaneously process the emergency event data from the radio receiver and the digital data from the cellular phone system." Thus, as stated in the Advisory Action, the Examiner has omitted necessary claim language about which Applicants have properly argued is not present in Videtich. It should be noted here that use of the term "further utilizes" in the quoted clause is used to reference one of multiple configuration requirements for the system to generate an output to a display, and when the claim is properly viewed as a whole, cannot be read as a limitation unrelated to providing the output to the display.

The Examiner cannot erase meaningful claim limitations in order to reach a finding of anticipation. "During patent examination, the pending claims must be 'given their broadest reasonable interpretation consistent with the specification.'" (Manual of Patent Examining Procedure (M.P.E.P.), Eighth Edition, September 2007 Revision §2111, citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (*en banc*)). However, "[a] claim is anticipated [under 35 U.S.C. §102(e)] only if each and every element as set forth in the claim is

found, either expressly or inherently described, in a single prior art reference." (*Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987); see also M.P.E.P. §2131).

The Examiner's interpretation of the present claims is unreasonable because it impermissibly ignores necessary claim limitations to reach a finding of anticipation. As stated in the Advisory Action, Applicant's arguments have been ignored on the basis that they do not relate to actual limitations found in the claims. In fact, Applicant's arguments relate to limitations present in the claims that have been improperly omitted from the Examiner's construction of the claim language.

Furthermore, the Examiner had previously indicated that prior versions of certain claims, including claim 19, would be allowable. (6/6/2005 Office Action, pp. 5 and 6). When the claims were amended according to the subject matter indicated to be allowable, a new rejection of those claims was entered. After Applicant added additional limitations to claims 12 and 19, the Examiner again rejected the claims on a new basis in the final Office Action of October 20, 2006. This prosecution history demonstrates how the final Office Action has relied upon a strained and impermissibly distorted interpretation of Videtich as the Applicant has amended the claims to clearly distinguish the present invention over all of the prior art of record.

C. **The Office Action Fails To Establish A Prime Facie Case Of Anticipation Because It Relies Upon An Impermissible Interpretation Of Videtich**

In the Response After Final filed December 20, 2006, the Remarks presented by the Applicant also focused on the failure of the Office Action of October 20, 2006 to establish a prima facie case of anticipation based upon Videtich because the Office Action relied upon an impermissible interpretation of Videtich to cover subject matter not contemplated by that reference.

In order to anticipate a claim, the identical invention must be shown in a reference in as complete detail as is contained in the claim. (M.P.E.P. §2131, citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989)).

The Examiner has argued that Videtich contains disclosure that is not present in that reference, when properly viewed from the standpoint of one of ordinary skill in the art. Paragraph three of the October 20, 2006 final Office Action argues that Videtich discloses a computer processor located within in a portable system utilizing control software to simultaneously process emergency event data and digital data from two different sources. However, Videtich makes no such disclosure about *simultaneous* processing within a portable unit, but rather discloses processing of *sequential and independent* data transmissions, which is a substantially different configuration. These positions taken in the Office Action rest upon a flawed interpretation of Videtich, and cannot be used to reject claims 19, 43 and 48.

Furthermore, the final Office Action argues that Videtich discloses providing an output to a display to indicate a location of both the portable alert system and the location of the emergency event. However, Videtich discloses only one of those elements and not both. Specifically, Videtich does not disclose providing an output to a display indicating the location of the portable alert system. The severe weather information provided as text or audible alerts by Videtich fall short of the recitations of the present claims that require more, namely that an output be provided to a display indicative of the locations of both the portable alert system and the emergency event. In this way, the present invention allows users to obtain much more detailed and specific information relative to their current location, rather than requiring users to have to calculate themselves their proximity to severe weather conveyed in an audible alert or text message.

D.   Summary

Videtich does not show, teach or disclose a computer processor that utilizes control software to simultaneously process emergency event data from a radio receiver and digital data from a cellular phone system to provide an output to a display indicating a position of the portable alert system and a position of an emergency, as required by independent claim 19. Instead, Videtich discloses being prompted by satellite radio transmissions (from the call center

(108) via the satellite (120)) to subsequently contact the call center (108) using a mobile/cellular telephone tower (158) and obtain additional information along a separate and independent communications channel. In other words, the mobile telephone system of Videtich does not provide digital data with a cellular phone system that is simultaneously processed with emergency event data from a radio receiver.

The configuration of Videtich requires a call station (108) that coordinates all data transmission, whereas the present invention makes substantial improvement over Videtich and other prior art references in doing away with a need to have a call center. The mobile telephone system of Videtich does not provide digital data with a cellular phone system that is *simultaneously* processed with emergency event data from a radio receiver, but instead relates to *sequential* processing. Here it should be noted that any processing by Videtich occurring at the call center (108) rather than in the telemetatics unit (128) in the vehicle (144) would fail to meet the present claims, which specify that processing is by a computer processor that is in the portable system rather than a fixed call center. For this reason, Videtich lacks any disclosure or suggestion to utilize different data sources for processing simultaneously as presently claimed.

Moreover, the final Office Action and the Advisory Action both improperly rely on paragraph twenty-one of Videtich to say that simultaneous processing of different data is disclosed. This interpretation of Videtich departs from the actual disclosure as would be understood by one of ordinary skill in the art in order to expand the disclosure based on hindsight, given the disclosure of the present invention. Paragraph twenty-one of Videtich relates to conventional-style phone calls to the call center (108) that take place independent of data processing linked to the output to the vehicle display unit (126), and does not imply or suggest anything else.

In addition, Videtich does not disclose providing an output to a display indicating a position of both the portable alert system and a position of an emergency. Videtich does not disclose providing a display with the location of the vehicle (144) or the telematics unit (128). Videtich mentions text or audible alerts about generalized severe weather locations, but fails to disclose identification of both a position of the portable alert system and a position of an

emergency. (Videtich, ¶¶19 and 20). The Advisory Action cites to discussions in Videtich at paragraphs four and five that discuss indicating a location of severe weather in a location of the vehicle (144), but these cited passages still do not disclose providing an output to a display indicating a position of the vehicle (144) or any system components located therein. Moreover, contrary to the Advisory Action, the language of independent claim 19 clearly requires the "control software utilized by the computer processor . . . to provide an output to a display indicating a position of the portable alert system and a position of an emergency."

Therefore, Videtich does not show, teach or disclose all the limitations of independent claim 19. The rejection under 35 U.S.C. § 102(e) should accordingly be withdrawn. Claims 43 and 48 depend from amended independent claim 19, and include all of the limitations of that base claim. Dependent claims 43 and 48 are likewise allowable over the cited art for the reasons stated above, and the rejections of those claims under §102(e) should also be reversed.

2.   **Rejections of Claims 12, 42 and 47**

    A.   **Background**

        (1)   **Summary of Rejections**

In paragraphs five and six of the October 20, 2006 final Office Action, claims 12, 42 and 47 were rejected under 35 U.S.C. §103(a) as being obvious over Videtich (U.S. Pat. App. Pub. No. 2004/0080430) in conjunction with subject matter for which Official Notice was taken. Official Notice was taken at page four of the October 20, 2006 final Office Action to state "that it is well known in the art to substitute a satellite phone with a cellular phone. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a satellite phone in stead of a cellular phone connection because satellite phones have a larger service area, which would be beneficial in traveling in remote areas."

        (2)   **The Invention**

In general, the present invention relates to a portable alert system for receiving

emergency event data. More particularly, the present invention provides a Weather Information Network Enabled Mobile System (WINEMS) unit 10 for receiving (a) emergency event data via a radio receiver (20) and (b) digital data via a satellite receiver (16) or a cellular phone system (92). (See FIGS. 1a, 1b, 1c, 2a, and 3a). The WINEMS unit (10) includes control software (12) that is connected to a display system (14) for providing a visual output based upon information processed from the satellite receiver (16) or cellular phone system (92), a global positioning system (GPS) receiver (18), and the weather radio (20). (Specification p. 5, ll. 21-26).

Emergency event data (70) is received by radio by automatically programming the WINEMS unit (10) to receive only an emergency data broadcast signal associated with a current location of the unit (10). In order to accomplish this automatic programming, the GPS receiver (18) obtains position data (64) indicating a location of the WINEMS unit (10). (Specification p. 9, ll. 7-10). Emergency event data (70) specific to the current location of the WINEMS unit (10) can be received by the weather radio (20) through automatic programming based upon FIPS codes and Specific Area Message Encoding (SAME) codes associated with emergency event radio broadcasts. (Specification, p. 6-8, 13 and 14; FIGS. 2b and 4). Control software (12) sends emergency data (70) received from the weather radio (20) to a computer processor running a display software routine (42), which can then generate a visual display output based upon both the emergency event data (70) and processed radar data (60) provided as an overlay to a relevant map, as explained further below. (Specification p. 10, ll. 16-26; FIGS. 1b, 3a and 3b).

Digital data received by the satellite receiver (16) provides additional data that is combined with the emergency event data (70) received by the radio receiver (20) through simultaneous processing for display. Control software (12) and digital mapping software (22) run by the computer processor of the WINEMS unit (10) uses the position data (64) in conjunction with radar data (56) provided as part of the digital data received by the unit (10). (Specification, p. 5, ll. 12-20). The digital data can optionally provide icons on a relevant map indicative of particular emergency events, such as for hail storms, blizzards, toxic waste spills, etc. to make identification of emergency events easier for users. (Specification p. 6, ll. 11-19;

FIG. 3b). A local weather radar extraction software routine (44) is used to extract only the weather radar data specific to the current location of the WINEMS unit (10) based on the position data (64), and the resultant processed radar data (60) is provided via a display software routine (42) to display on the video display (14). (Specification p. 9, ll. 10-12; p. 10, ll. 6-15)

Significantly, the display software (42) generates image data (80) that provides a visual indication of both the emergency and location of the user relative to that emergency, and the image data (80) can be displayed in the form of a map. (Specification p. 10, ll. 22-24). The visual display on the display system 14 is in addition to an audio signal provided to audio software (40) so that the audio portion of the emergency data (70) can be played through an audio system (50). (Specification p. 10, ll. 16-21; FIGS. 1b, 3a and 3b). The location information of the WINEMS unit 10 can be displayed on the map in the form of an icon, which can indicate whether or not the location of the WINEMS unit 10 is static or dynamic relative to the emergency event and, as appropriate, the direction in which the unit (10) is traveling. (Specification p. 11, ll. 3-11; FIGS. 3 a and 3b).

(3)   Videtich

Videtich (U.S. Pat. App. Pub. No. 2004/0080430) discloses a method and system for delivering location-dependent severe weather information. Videtich discloses a GPS receiver (140) for determining vehicle (144) position, a telematics unit (128) located in the vehicle (144), a satellite (120), a satellite radio receiver (124) located in the vehicle (144), a vehicle display unit (126), a call center (108), a mobile telephone tower (158), and a weather information source (102). (Videtich, ¶¶11-13, 15 and 17; FIG. 1). Videtich discloses collecting severe weather data from the source (102) at the call center (108) and then sending a single, compiled (and potentially reformatted) severe weather data signal to the satellite radio receiver (124) in the vehicle (144) via the satellite (120) and a satellite radio uplink delivery system (116). (Videtich, ¶¶11-14 and 22-24; FIGS. 1 and 2). The severe weather information received by the satellite radio receiver (124) is issued to the vehicle display unit (126) to provide "textural warning

types" that "may be rendered as speech output, and/or may be a non-speech audio alarm." (Videtich, ¶19). Videtich does not disclose indicating a location of the vehicle (144) or telematics unit (128) on the vehicle display unit (126).

The Videtich system discloses communicating between the call center (108) and the telematics unit (128) using the mobile telephone tower (158), but does not disclose simultaneously processing emergency event data from two or more sources. (Videtich, ¶¶12-14 and 19-21; FIGS. 1 and 2). Rather, Videtich discloses a separate, conventional telephone link to the call center (108) that allows a user to communicate with the call center (108). In other words, the mobile phone connection of Videtich can be used as an independent communications channel to provide two-way or "duplex" communication between the mobile vehicle (144) and the call center (108) in order to manually obtain new weather information or to submit remote programming changes. (Videtich, ¶¶20 and 21). However, that procedure does not involve simultaneous processing of different data signals but instead is a procedure that triggers the transmission of a single additional data signal after weather information has already been received with the satellite radio receiver (124). Videtich makes clear that communication via the mobile telephone tower (158) takes place after weather data has been obtained with the satellite radio receiver (124), in other words in a non-simultaneous manner. (Videtich, ¶27; FIG. 3). In this way, Videtich discloses that its system can resemble known OnStar™ systems which utilize calls to a live operator located in a centralized call center.

At page four of the final Office Action, the Examiner admits that "Videtich does not disclose a satellite receiver for receiving digital data." In this context, the examiner has applied Videtich as only disclosing a "radio receiver" as recited in the present claims but not including a separate satellite receiver.

B.   The Office Action Fails To Establish A Prime Facie Case Of Obviousness Because It Relies Upon An Impermissible Construction Of The Claim Language

The primary issue in this appeal is whether it was permissible to interpret Videtich to disclose a computer processor that utilizes control software to simultaneously process emergency event data from a radio receiver and digital data from a cellular phone system or satellite receive to provide an output to a display indicating a position of the portable alert system and a position of an emergency. Page two of the Advisory Action mailed January 16, 2007 includes the Examiner's response to the arguments presented in the Response After Final of December 20, 2006. There, the Examiner advanced the proposition that Applicant "argues a limitation that isn't present," stating that "[t]here is no requirement of simultaneous processing of the digital data and emergency event data to output to a display." This statement in the Advisory Action is made without reference to the language of claim 12 (which is similar to that of claim 19) that reads "control software utilized by the computer processor for processing the emergency event data and an input from the global positioning system to provide an output to a display . . . wherein the computer processor further utilizes the control software to simultaneously process the emergency event data from the radio receiver and the digital data from the satellite receiver." Thus, as stated in the Advisory Action, the Examiner has omitted necessary claim language about which Applicants have properly argued is not present in Videtich. It should be noted here that use of the term "further utilizes" in the quoted clause is used to reference one of multiple configuration requirements for the system to generate an output to a display, and when the claim is properly viewed as a whole, cannot be read as a limitation unrelated to providing the output to the display.

The Examiner cannot erase meaningful claim limitations in order to reach a finding of obviousness. The Examiner's interpretation of the present claims is unreasonable because it impermissibly ignores necessary claim limitations to reach a finding of obviousness. As stated in the Advisory Action, Applicant's arguments have been ignored on the basis that they do not relate to actual limitations found in the claims. In fact, Applicant's arguments relate to limitations present in the claims that have been improperly omitted from the Examiner's construction of the claim language.

Furthermore, the Examiner had previously indicated that prior versions of certain

claims, including claim 12, would be allowable. (6/6/2005 Office Action, pp. 5 and 6). When the claims were amended according to the subject matter indicated to be allowable, a new rejection of those claims was entered. After Applicant added additional limitations to claims 12 and 19, the Examiner again rejected the claims on a new basis in the final Office Action of October 20, 2006. This prosecution history demonstrates how the final Office Action has relied upon a strained and impermissibly distorted interpretation of Videtich as the Applicant has amended the claims to clearly distinguish the present invention over all of the prior art of record.

C.   **The Office Action Fails To Establish A Prime Facie Case Of Obviousness Because It Relies Upon An Impermissible Interpretation Of Videtich**

In the Response After Final filed December 20, 2006, the Remarks presented by the Applicant also focused on the failure of the Office Action of October 20, 2006 to establish a prima facie case of obviousness based upon Videtich because the Office Action relied upon an impermissible interpretation of Videtich to cover subject matter not contemplated by that reference.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. §103, the rejections must rest on a factual basis. In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis, and may not rely upon speculation, assumption or hindsight reconstruction to supply deficiencies in the factual basis. (*In re Warner*, 37 F.2d 1011, 1017 (CCPA 1967), *cert denied*, 389 U.S. 1057 (1968)). Furthermore, obviousness rejections "cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. ____, 82 USPQ.2d 1385 (2007) (*quoting In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006))). This reasoning should be made explicit, and it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [cited prior art] elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long

since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known." (*KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. ___ (2007); *see also* M.P.E.P. §2142). The M.P.E.P. warns against the improper use of hindsight in attempting to establish *prima facie* obviousness.

> To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at the time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

MPEP §2142.

The Examiner has argued that Videtich contains disclosure that is not present in that reference, when properly viewed from the standpoint of one of ordinary skill in the art. Paragraph three of the October 20, 2006 final Office Action argues that Videtich discloses a computer processor located within in a portable system utilizing control software to simultaneously process emergency event data and digital data from two different sources. However, Videtich makes no such disclosure about *simultaneous* processing within a portable unit, but rather discloses processing of *sequential and independent* data transmissions, which is a substantially different configuration. These positions taken in the Office Action rest upon a flawed interpretation of Videtich, and cannot be used to reject claims 12, 42 and 47. This is true despite the subject matter for which Official Notice has been taken, because the subject matter of the Office Notice does not supply this element of the present claims that is missing from

Videtich.

Furthermore, the final Office Action argues that Videtich discloses providing an output to a display to indicate a location of both the portable alert system and the location of the emergency event. However, Videtich discloses only one of those elements and not both. Specifically, Videtich does not disclose providing an output to a display indicating the location of the portable alert system. The severe weather information provided as text or audible alerts by Videtich fall short of the recitations of the present claims that require more, namely that an output be provided to a display indicative of the locations of both the portable alert system and the emergency event. In this way, the present invention allows users to obtain much more detailed and specific information relative to their current location, rather than requiring users to have to calculate themselves their proximity to severe weather conveyed in an audible alert or text message.

D.   Summary

As discussed above, Videtich does not teach or suggest simultaneous processing of different data sources. The Office Action has also not stated in the record a logical, factual basis as to why a person of ordinary skill in the art would have been motivated to modify the Videtich in such a way as to provide simultaneous processing at the time the present invention was made. Accordingly, even if the disclosure of Videtich were combined with the subject matter of the Official Notice, there would still be no disclosure, teaching or suggestion to utilize simultaneous processing of different data sources. Furthermore, the Official Notice does not remedy the fact that Videtich also fails to teach or disclose providing an output to a display indicating a position of the portable alert system and a position of an emergency, as discussed above. Satellite phones do not typically include complex visual displays for digital data, and such features were not included and made of record in the Official Notice.

Thus, Videtich in view of the Official Notice fails to teach or suggest each and every limitation of independent claim 12, and the rejection of that claim under §103(a) should

accordingly be withdrawn. Claims 42 and 47 depend from amended independent claim 12, and include all of the limitations of that base claim. For the reasons stated above, dependent claims 42 and 47 are likewise allowable over the cited art, and the rejections of those claims under §103(a) should be reversed.

3. **Rejection of Claim 16**

    A. **Background**

        (1) **Summary of the Rejection**

In paragraphs seven and eight of the October 20, 2006 final Office Action, claim 16 was rejected under 35 U.S.C. §103(a) as being obvious over Videtich (U.S. Pat. App. Pub. No. 2004/0080430) in view of Koeller (U.S. Pat. No. 6,297,766). Claim 16 depends from independent claim 12, discussed above, and further requires that the digital data received by the satellite receiver comprises digital radar data.

        (2) **The Invention**

In general, the present invention relates to a portable alert system for receiving emergency event data. More particularly, the present invention provides a Weather Information Network Enabled Mobile System (WINEMS) unit 10 for receiving (a) emergency event data via a radio receiver (20) and (b) digital data via a satellite receiver (16) or a cellular phone system (92). (See FIGS. 1a, 1b, 1c, 2a, and 3a). The WINEMS unit (10) includes control software (12) that is connected to a display system (14) for providing a visual output based upon information processed from the satellite receiver (16) or cellular phone system (92), a global positioning system (GPS) receiver (18), and the weather radio (20). (Specification p. 5, ll. 21-26).

Emergency event data (70) is received by radio by automatically programming the WINEMS unit (10) to receive only an emergency data broadcast signal associated with a current location of the unit (10). In order to accomplish this automatic programming, the GPS

receiver (18) obtains position data (64) indicating a location of the WINEMS unit (10). (Specification p. 9, ll. 7-10). Emergency event data (70) specific to the current location of the WINEMS unit (10) can be received by the weather radio (20) through automatic programming based upon FIPS codes and Specific Area Message Encoding (SAME) codes associated with emergency event radio broadcasts. (Specification, p. 6-8, 13 and 14; FIGS. 2b and 4). Control software (12) sends emergency data (70) received from the weather radio (20) to a computer processor running a display software routine (42), which can then generate a visual display output based upon both the emergency event data (70) and processed radar data (60) provided as an overlay to a relevant map, as explained further below. (Specification p. 10, ll. 16-26; FIGS. 1b, 3a and 3b).

Digital data received by the satellite receiver (16) provides additional data that is combined with the emergency event data (70) received by the radio receiver (20) through simultaneous processing for display. Control software (12) and digital mapping software (22) run by the computer processor of the WINEMS unit (10) uses the position data (64) in conjunction with radar data (56) provided as part of the digital data received by the unit (10). (Specification, p. 5, ll. 12-20). The digital data can optionally provide icons on a relevant map indicative of particular emergency events, such as for hail storms, blizzards, toxic waste spills, etc. to make identification of emergency events easier for users. (Specification p. 6, ll. 11-19; FIG. 3b). A local weather radar extraction software routine (44) is used to extract only the weather radar data specific to the current location of the WINEMS unit (10) based on the position data (64), and the resultant processed radar data (60) is provided via a display software routine (42) to display on the video display (14). (Specification p. 9, ll. 10-12; p. 10, ll. 6-15)

Significantly, the display software (42) generates image data (80) that provides a visual indication of both the emergency and location of the user relative to that emergency, and the image data (80) can be displayed in the form of a map. (Specification p. 10, ll. 22-24). The visual display on the display system 14 is in addition to an audio signal provided to audio software (40) so that the audio portion of the emergency data (70) can be played through an audio system (50). (Specification p. 10, ll. 16-21; FIGS. 1b, 3a and 3b). The location

information of the WINEMS unit 10 can be displayed on the map in the form of an icon, which can indicate whether or not the location of the WINEMS unit 10 is static or dynamic relative to the emergency event and, as appropriate, the direction in which the unit (10) is traveling. (Specification p. 11, ll. 3-11; FIGS. 3 a and 3b).

(3)   Videtich

Videtich (U.S. Pat. App. Pub. No. 2004/0080430) discloses a method and system for delivering location-dependent severe weather information. Videtich discloses a GPS receiver (140) for determining vehicle (144) position, a telematics unit (128) located in the vehicle (144), a satellite (120), a satellite radio receiver (124) located in the vehicle (144), a vehicle display unit (126), a call center (108), a mobile telephone tower (158), and a weather information source (102). (Videtich, ¶¶11-13, 15 and 17; FIG. 1). Videtich discloses collecting severe weather data from the source (102) at the call center (108) and then sending a single, compiled (and potentially reformatted) severe weather data signal to the satellite radio receiver (124) in the vehicle (144) via the satellite (120) and a satellite radio uplink delivery system (116). (Videtich, ¶¶11-14 and 22-24; FIGS. 1 and 2). The severe weather information received by the satellite radio receiver (124) is issued to the vehicle display unit (126) to provide "textural warning types" that "may be rendered as speech output, and/or may be a non-speech audio alarm." (Videtich, ¶19). Videtich does not disclose indicating a location of the vehicle (144) or telematics unit (128) on the vehicle display unit (126).

The Videtich system discloses communicating between the call center (108) and the telematics unit (128) using the mobile telephone tower (158), but does not disclose simultaneously processing emergency event data from two or more sources. (Videtich, ¶¶12-14 and 19-21; FIGS. 1 and 2). Rather, Videtich discloses a separate, conventional telephone link to the call center (108) that allows a user to communicate with the call center (108). In other words, the mobile phone connection of Videtich can be used as an independent communications channel to provide two-way or "duplex" communication between the mobile vehicle (144) and

the call center (108) in order to manually obtain new weather information or to submit remote programming changes. (Videtich, ¶¶20 and 21). However, that procedure does not involve simultaneous processing of different data signals but instead is a procedure that triggers the transmission of a single additional data signal after weather information has already been received with the satellite radio receiver (124). Videtich makes clear that communication via the mobile telephone tower (158) takes place after weather data has been obtained with the satellite radio receiver (124), in other words in a non-simultaneous manner. (Videtich, ¶27; FIG. 3). In this way, Videtich discloses that its system can resemble known OnStar™ systems which utilize calls to a live operator located in a centralized call center.

At page four of the final Office Action, the Examiner admits that "Videtich does not disclose a satellite receiver for receiving digital data." In this context, the examiner has applied Videtich as only disclosing a "radio receiver" as recited in the present claims but not including a separate satellite receiver.

(4)   Koeller

Koeller (U.S. Pat. No. 6,297,766) discloses a portable weather indicating device and method. The device (100) of Koeller includes a housing (110) having a display (120), a GPS receiver (220), a microprocessor (230), and a communications link (250). (Koeller, col. 2, ll. 61-67; FIGS. 1 and 2). Koeller discloses that the communications link (250) can operate using RF, modem, cellular phone, or satellite communications. (Koeller, col. 3, line 56 to col. 4, line 25). Weather data is transmitted from a data source (202) to a base station (200) having a communications link (204), which in turn in linked to the communications link (250) of the device (100). (Koeller, col. 4, ll. 6-13 and 26-47; FIG. 2). Weather data received by the device (100) of Koeller can include visual weather data displayed on the display (120). (Koeller, col. 4, ll. 26-47; col. 6, ll. 1-56; FIGS. 6 and 7). According to Koeller, all weather data, including weather image data, is transmitted to from a single source. (Koeller, col. 5, line 20 to col. 6, line 56; FIGS. 3, 6 and 7). Namely, the device (100) of Koeller obtains weather data solely from a

single wireless link with the nearest base station (200). (Koeller, col. 5, ll. 20-27 and 57-64).

B.   The Art Cited By the Office Action Fails to Establish a Prima Facie Case of Obviousness of Claim 16

As discussed above, Videtich fails to teach or disclose providing an output to a display indicating a position of the portable alert system and a position of an emergency. Indeed, Videtich does not disclose any display of particular data, much less the specific type of data required to be displayed by dependent claim 16. Moreover, Koeller does not teach or suggest each and every limitation of dependent claim 16 either alone or in conjunction with Videtich. As required by dependent claim 16, a computer processor located within the portable alert system must utilize control software to simultaneously process emergency event data from a radio receiver and digital data from a satellite receiver. In contrast, Koeller discloses only the use of a single communications link (between communication links 204 and 250). Koeller discloses alternative means for enabling the single communication link, but fails to disclose simultaneous processing of emergency event data from a radio receiver and digital radar data from a satellite receiver within the portable device (100). Indeed, Koeller fails to disclose simultaneous processing of different types of data signals within the portable device (100) at all. Rather, as discussed above, Koeller obtains only signals from the data source (202) of the base station (200), such that processing is performed at the base station (200) rather than at the portable device (100). This is important because dependent claim 16 requires that the digital radar data be received by a satellite receiver and processed simultaneously with emergency event data received by a radio receiver within a portable alert system. The Office Action has not provided a logical, factual basis for modifying the cited references to arrive at the present invention that would have been known to a person of ordinary skill in the art at the time the present invention was made.

Thus, Videtich in view of Koeller fail to teach or suggest each and every limitation of dependent claim 16, and the rejection of that claim under §103(a) should be reversed.
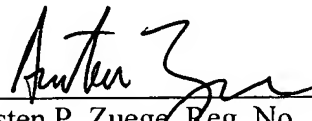
Conclusion

In view of the foregoing, it is respectfully requested that the appeal of claims 12, 16, 19, 42, 43, 47 and 48 be granted, such that pending claims 12, 16, 19, 42, 43, 47 and 48 of the present application are allowed.

Respectfully submitted,

KINNEY & LANGE, P.A.

Date:___3.19.2008___   By:_____

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Claims Appendix

1-11. (Canceled)

12. (Previously presented)   A portable alert system for receiving emergency event data, the portable alert system comprising:

        a radio receiver for receiving emergency event data;

        a global positioning system receiver for determining a location of the

            portable alert system;

        a satellite receiver for receiving digital data;

        a computer processor disposed within the portable alert system; and

        control software utilized by the computer processor for processing the emergency event data and an input from the global positioning system to provide an output to a display indicating a position of the portable alert system and a position of an emergency, wherein the computer processor further utilizes the control software to process the input from the global positioning system receiver to automatically program the radio receiver to receive only an emergency data broadcast data signal associated with the location of the portable alert system, and wherein the computer processor further utilizes the control software to simultaneously process the emergency event data from the radio receiver and the digital data from the satellite receiver.

13-15. (Canceled)

16. (Previously presented) The portable alert system of claim 12 wherein the digital data received by the satellite receiver comprises digital radar data.

17-18. (Canceled)

19. (Previously presented)   A portable alert system for receiving emergency event data, the portable alert system comprising:

        a radio receiver for receiving emergency event data;

        a global positioning system receiver for determining a location of the

            portable alert system;

        a cellular phone system for receiving digital data;

        a computer processor disposed within the portable alert system; and

        control software utilized by the computer processor for processing the emergency

            event data and an input from the global positioning system to provide an

            output to a display indicating a position of the portable alert system and a

            position of an emergency, wherein the computer processor further utilizes

            the control software to process the input from the global positioning

            system receiver to automatically program the radio receiver to receive

only an emergency data broadcast data signal associated with the location of the portable alert system, and wherein the computer processor further utilizes the control software to simultaneously process the emergency event data from the radio receiver and the digital data from the cellular phone system.

20-41. (Canceled)

42. (Previously Added)   The portable alert system of claim 12, wherein the emergency data broadcast data signal is associated with a specified analog broadcast frequency.

43. (Previously Added)   The portable alert system of claim 19, wherein the emergency data broadcast data signal is associated with a specified analog broadcast frequency.

44-46. (Canceled)

47. (Previously Added)   The portable alert system of claim 12, wherein the digital data comprises emergency event data.

48. (Previously Added)   The portable alert system of claim 19, wherein the digital data comprises emergency event data.

Evidence Appendix

1.   <u>Evidence entered by the Examiner and relied upon by the Appellant</u>:

None.

2.   <u>Evidence relied upon by the Examiner as to grounds of rejection to be reviewed on appeal</u>:

Videtich, U.S. Pat. App. Pub. No. 2004/0080430 (entered in to the record by the Examiner in the August 27, 2004 Office Action).

Official Notice taken by the Examiner (entered into the record by the Examiner in the final Office Action mailed October 20, 2006 at p. 4, ¶6).

Koeller, U.S. Pat. No. 6,297,766 (entered into the record by the Applicant in the January 12, 2004 Supplemental Information Disclosure Statement submitted by Alana Bergman, and first cited by the Examiner in the Office Action mailed January 27, 2006).

Related Proceedings Appendix

None.

Table of Authorities Appendix

1. *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005).

2. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987).

3. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989).

4. *In re Warner*, 37 F.2d 1011 (CCPA 1967), *cert denied*, 389 U.S. 1057 (1968).

5. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. ____, 82 USPQ.2d 1385 (2007).

6. M.P.E.P. §2142.

7. M.P.E.P. §2111.

8. M.P.E.P. §2131.